

BEFORE LINDA McCULLOCH, SUPERINTENDENT OF PUBLIC INSTRUCTION
STATE OF MONTANA

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| YELLOWSTONE COUNTY SCHOOL |) | |
| DISTRICT NO. 7-70, LAUREL, |) | |
| MONTANA, by and through its |) | OSPI 285-01 |
| Board of Trustees |) | |
| Appellant, |) | DECISION AND ORDER |
| -vs- |) | |
| |) | |
| MICHAEL MICHUNOVICH, |) | |
| |) | |
| Respondent. |) | |

Having reviewed the record below and considered the parties' briefs and oral argument, the State Superintendent issues the following Order.

DECISION AND ORDER

The April 13, 2001, decision by the County Superintendent is REVERSED, and this matter is REMANDED to the County Superintendent for further proceedings to determine whether Mr. Michunovich's appeal is a contested case and whether the County Superintendent has jurisdiction over the matter, pursuant to Admin. R. Mont. 10.6.104.

PROCEDURAL HISTORY

This is an appeal by the Board of Trustees of School District No. 7-70, Laurel, Montana ("the District"). On February 26, 2001, the District's Board of Trustees ("the Board") apparently passed a resolution to begin a search for a new principal for the Laurel High School. Michael Michunovich, the Respondent in this matter, was the principal of that school at that time. On March 23, 2001, Mr. Michunovich filed with the Yellowstone County Superintendent of Schools ("the County Superintendent") a notice of appeal of the Board's decision. The District filed a Reply to Mr. Michunovich's Notice of Appeal on April 11, 2001. By Order dated April 13,

2001, the County Superintendent, *sua sponte*, reversed the Board's decision and ordered that Mr. Michunovich be reinstated as the principal of the Laurel High School. In his Order, the County Superintendent asserted that the District filed its reply two days late. The County Superintendent concluded that because the District "has failed to reply to the allegations contained in [Mr. Michunovich's] notice of appeal in the mandated time, the Yellowstone County Superintendent finds the allegations [contained in the notice] true." Relying on Admin. R. Mont. 10.6.105(4), the County Superintendent essentially defaulted the District and entered his Order.

STANDARD OF REVIEW

The State Superintendent's review of a county superintendent's decision is based on the standard of review of administrative decisions established by the Montana Legislature in Mont. Code Ann. §2-4-704 and adopted by the State Superintendent in Admin. R. Mont. 10.6.125. The State Superintendent may reverse or modify the County Superintendent's decision if substantial rights of the appellant have been prejudiced because the findings of fact, conclusions of law and order are (a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority; (c) made upon unlawful procedure; (d) affected by other error of law; (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or (g) affected because findings of fact upon issues essential to the decision were not made although requested. Admin. R. Mont. 10.6.125(4). Finally, the Montana Supreme Court has held that conclusions of law shall be reviewed to determine if the agency's interpretation of the law is correct. Steer, Inc. v. Dept. of Revenue, 245 Mont. 470, 474, 803 P.2d 601, 603 (1990).

MEMORANDUM OPINION

Issue: Did the County Superintendent err as a matter of law in reversing the

Board's decision based solely on the tardiness of the District's Reply? Yes, although Admin. R. Mont. 10.6.105(4) provides grounds for the dismissal of an appeal, the County Superintendent may not ignore his duties outlined in Admin. R. Mont. 10.6.104.

Montana law provides that, with limited exception, the County Superintendent shall hear and decide all matters of controversy arising in Yellowstone County as a result of decisions of the Board. Mont. Code Ann. §20-3-210(1). The process by which the County Superintendent does so is governed by Admin. R. Mont. 10.6.101. *et seq.* Those rules provide that the County Superintendent shall, upon receipt of Mr. Michunovich's note of appeal, determine "(a) whether the appeal is a contested case; and (b) whether [the County Superintendent] has jurisdiction on the matter." Admin. R. Mont. 10.6.104(1). That rule does not state that unless dismissed pursuant to Admin. R. Mont. 10.6.105(4), the County Superintendent must determine contested case status and jurisdiction. On the contrary, the County Superintendent has an affirmative duty to review the notice of appeal within the context of Admin. R. Mont. 10.6.102 (contested case) and 10.6.104 (jurisdiction).

The County Superintendent failed to do so in this case. Mr. Michunovich argues that the County Superintendent, by the act of issuing an order, determined that the matter was a contested case and that he had jurisdiction. However, the County Superintendent's Order does not support this assertion.

A contested case, over which the County Superintendent has jurisdiction, is "any proceeding in which a determination of legal rights, duties or privileges of a party is required by law to be made after an opportunity for hearing." Admin. R. Mont. 10.6.102. The County Superintendent specifically and explicitly avoided that determination in his Order. He noted that

“The County Superintendent does not make a determination whether the appeal is on the termination of a tenured teacher.” County Superintendent Order, page 2. Given the apparent nature of this conflict, it is reasonable to conclude that the County Superintendent must examine what legal rights, duties and privileges the parties hold. The County Superintendent may conclude, of course, that the matter is not a contested case and he therefore lacks jurisdiction to hear the appeal. He may conclude the opposite. The administrative rules governing this matter contemplate the County Superintendent’s examination of jurisdiction. The rules provide:

“The county superintendent shall, at all times, have jurisdiction to determine the jurisdiction over any particular contested case. In such situations, the rules of procedure shall apply, and questions of jurisdiction may be resolved by rulings and orders based upon the pleadings or after a hearing, as necessary to suit the circumstances of the case.”

Admin. R. Mont. 10.6.104(2).

In reversing the Board’s decision, the County Superintendent relied on an administrative rule that provides that the “Failure of any party to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal but is grounds for such action as the county superintendent deems appropriate, which may include dismissal of the appeal.” Admin. R. Mont. 10.6.105(4). He concluded that since the District filed a written reply in twelve days, rather than the ten days as required by Admin. R. Mont. 10.6.103(2), he had the “power to penalize” the District. That conclusion is unreasonable given the County Superintendent’s duty to determine jurisdiction, as outlined above. As noted, Admin. R. Mont. 10.6.104 outlines an affirmative duty, and the County Superintendent’s exercise of the authority granted in Admin. R. Mont. 10.6.103(2) does not excuse that duty. Indeed, the County Superintendent went beyond dismissing the appeal in this case; he reversed the Board’s decision and ordered Mr. Michunovich’s reinstatement.

The parties raise other issues in their briefs and oral argument. However, the question before the State Superintendent in this appeal is a very narrow question and its answer resolves this appeal. The central issue is whether the County Superintendent's Order is in violation of administrative procedure. The County Superintendent erred by not determining whether Mr. Michunovich's appeal of the Board's decision is a contested case and whether the County Superintendent has jurisdiction over this matter.

Finally, while not dispositive of this appeal, the State Superintendent offers this observation concerning the issue of whether the Montana Rules of Civil Procedure govern the appeals of school controversies. Montana statutory law provides that "In order to establish a uniform method of hearing and determining matters of controversy arising under this title, the superintendent of public instruction shall prescribe and enforce rules of practice and regulations for the conduct of hearings and the determination of appeals by all school officials of the state." Mont. Code Ann. §20-3-107(3). By that authority, the State Superintendent promulgated administrative "rules of procedure for all school controversy contested cases before the county superintendents." Admin. R. Mont. 110.6.101, *et seq.*

Mr. Michunovich is correct in his observation that neither Montana statutory law nor the administrative rules cited above reference or incorporate the Montana Rules of Civil Procedure. The Rules of Civil Procedure govern the procedure in the district courts and the school controversy rules govern the procedure in appeals before a county superintendent and the State Superintendent. Rule 1, M.R.Civ.P., Admin. R. Mont. 10.6.101. Granted, there are instances in which county superintendents and the State Superintendent have looked to and relied on the Rules of Civil Procedure and the Supreme Court cases interpreting the same. However, in those instances, the superintendents were not required to follow the Rules of Civil Procedure. The

Rules were useful authority, but not controlling authority.¹ Therefore, this State Superintendent will continue to enforce the school controversy administrative rules and will not impose the Rules of Civil Procedure therein.

CONCLUSION

The April 13, 2001, decision by the County Superintendent is REVERSED, and this matter is REMANDED to the County Superintendent for further proceedings to determine whether Mr. Michunovich's appeal is a contested case and whether the County Superintendent has jurisdiction over the matter, pursuant to Admin. R. Mont. 10.6.104.

Dated this 5th day of December 2001.

/s/ LINDA McCULLOCH
Superintendent of Public Instruction

¹ Indeed, in this case, the County Superintendent used language demonstrating his use of the Rules of Civil Procedure as guidance and not as governing law. He noted that he "views the situation *as similar to* a default judgment in a civil case in any other court." County Superintendent Order, footnote 3 (emphasis added). It should also be noted that while the County Superintendent used the Rules of Civil Procedure to count days, he misapplied the concept of a default judgment. He essentially defaulted the District on his own initiative, something not permitted under the Rules of Civil Procedure. Rule 55(c), M.R.Civ.P.

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on this 5th day of December 2001, a true and exact copy of the foregoing DECISION AND ORDER was mailed, postage prepaid, to the following:

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